

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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<b>KAREN ANDERSON</b>	:	<b>CIVIL ACTION</b>
	:	
<b>vs.</b>	:	
	:	<b>No. 11-5614</b>
<b>THE CITY OF PHILADELPHIA, FRAN BURNS AND BARTLETT CLARK</b>	:	<b>Jury Trial Demanded</b>
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**ANSWER WITH AFFIRMATIVE DEFENSES OF DEFENDANTS CITY OF  
PHILADELPHIA, BARLETT CLARK AND FRAN BURNS**

Defendants, City of Philadelphia, Fran Burns and Bartlett Clark, by and through the undersigned counsel, Brock Atkins, Assistant City Solicitor, hereby files an answer to the plaintiff's complaint, together with affirmative defenses, and avers as follows:

1. Denied. After reasonable investigation, the City of Philadelphia is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 1 and therefore, the City denies the allegations.

2. Admitted in part; denied in part. It is admitted that the City of Philadelphia has a business address of One Parkway Building, 1515 Arch Street, 14<sup>th</sup> Floor, Philadelphia, PA 19102. The remaining allegations contained in paragraph 2 are denied as conclusions of law which require no responsive pleadings.

3. Denied. The allegations contained in paragraph 3 are conclusions of law which require no responsive pleading.

4. Admitted in part, denied in part. It is admitted only that Fran Burns is the Commissioner of the Department of Licenses and Inspections and an employee of the City of

Philadelphia. All other allegations in paragraph 4 are denied as conclusions of law.

5. Admitted in part, denied in part. It is admitted only that Bart Clark is an Inspector with the Department of Licenses and Inspections and an employee of the City of Philadelphia. All other allegations in paragraph 5 are denied as conclusions of law.

6. The averments contained in paragraph 6 are addressed to defendants other than the answering defendants herein. The answering defendants are therefore advised that no further answer is required to the averments contained therein.

7-9. Denied. After reasonable investigation, the answering defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 7-9 and therefore, the answering defendants deny the allegations. Moreover, the allegations contained in paragraphs 7-9 are conclusions of law which require no responsive pleadings and are therefore denied.

10-12. Denied. The allegations contained in paragraphs 10-12 are conclusions of law which require no responsive pleading.

13-28. Denied. After reasonable investigation, the answering defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 13-28 and therefore, the answering defendants deny the allegations. Moreover, the allegations contained in paragraphs 13-28 are conclusions of law which require no responsive pleadings and are therefore denied.

29. Admitted..

30-35. Denied. After reasonable investigation, the answering defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 30-35 and therefore, the answering defendants deny the allegations. Moreover, the

allegations contained in paragraphs 30-35 are conclusions of law which require no responsive pleadings and are therefore denied.

**COUNT I**

36. The answering defendants incorporate by reference its answers to paragraphs 1 through 35, inclusive, as fully as though the same were here set forth at length.

37-40. Denied. After reasonable investigation, the answering defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 37-40 and therefore, the answering defendants deny the allegations. Moreover, the allegations contained in paragraphs 37-40 are conclusions of law which require no responsive pleadings and are therefore denied.

**WHEREFORE**, the answering defendants deny that they are liable on the cause of action declared upon.

**COUNT II**

41. The answering defendants incorporate by reference its answers to paragraphs 1 through 40, inclusive, as fully as though the same were here set forth at length.

42-46. Denied. After reasonable investigation, the answering defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 42-46 and therefore, the answering defendants deny the allegations. Moreover, the allegations contained in paragraphs 42-46 are conclusions of law which require no responsive pleadings and are therefore denied.

**WHEREFORE**, the answering defendants deny that they are liable on the cause of action declared upon.

**COUNT III**

47. The answering defendants incorporate by reference its answers to paragraphs 1 through 46, inclusive, as fully as though the same were here set forth at length.

48-54. Denied. After reasonable investigation, the answering defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 48-54 and therefore, the answering defendants deny the allegations. Moreover, the allegations contained in paragraphs 48-54 are conclusions of law which require no responsive pleadings and are therefore denied.

**WHEREFORE**, the answering defendants deny that they are liable on the cause of action declared upon.

**COUNT IV**

55. The answering defendants incorporate by reference its answers to paragraphs 1 through 54, inclusive, as fully as though the same were here set forth at length.

56-58. Denied. After reasonable investigation, the answering defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 56-58 and therefore, the answering defendants deny the allegations. Moreover, the allegations contained in paragraphs 56-58 are conclusions of law which require no responsive pleadings and are therefore denied.

**WHEREFORE**, the answering defendants deny that they are liable on the cause of action declared upon.

**COUNT V**

59. The answering defendants incorporate by reference its answers to paragraphs 1 through 58, inclusive, as fully as though the same were here set forth at length.

60-63. Denied. After reasonable investigation, the answering defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 60-63 and therefore, the answering defendants deny the allegations. Moreover, the allegations contained in paragraphs 60-63 are conclusions of law which require no responsive pleadings and are therefore denied.

**WHEREFORE**, the answering defendants deny that they are liable on the cause of action declared upon.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiffs have failed to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Answering defendant assert all of the defenses, immunities, and limitations of damages available to him under the “Political Subdivision Tort Claims Act” and aver that Plaintiff’s remedies are limited exclusively thereto. Act of Oct 5, 1980, No. 142, P.L. 693, 42 Pa. C.S.A. § 8541 et seq.

#### **THIRD AFFIRMATIVE DEFENSE**

Answering Defendant is immune from liability under the doctrine of qualified immunity.

#### **FOURTH AFFIRMATIVE DEFENSE**

The plaintiff has suffered no legally cognizable injury, harm, loss, or damage upon which relief can be granted.

**FIFTH AFFIRMATIVE DEFENSE**

The plaintiff's claims are barred, in whole or in part, to the extent that she has failed to take reasonable measures to mitigate any or all damages.

**SIXTH AFFIRMATIVE DEFENSE**

The plaintiff's claims are barred, in whole or in part, insofar as Answering Defendant's purported actions or omissions were not the proximate cause of any alleged injury, loss, or damage incurred by the plaintiff.

**SEVENTH AFFIRMATIVE DEFENSE**

At all times material to this civil action, Answering Defendant has acted in a reasonable, proper, and lawful manner.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the applicable Statute of Limitations.

**WHEREFORE**, answering Defendants deny that they are liable upon all causes of action declared upon and demand judgment in his favor, plus interest and costs.

Respectfully submitted,

/s/ Brock J. Atkins  
BROCK J. ATKINS  
Assistant City Solicitor  
City of Philadelphia Law Department  
Civil Rights Unit  
1515 Arch Street, 14<sup>th</sup> Floor  
Philadelphia, PA 19102

DATED: September 30, 2011

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I, BROCK J. ATKINS, hereby certify that on this date, the foregoing **ANSWER WITH AFFIRMATIVE DEFENSES OF DEFENDANTS, CITY OF PHILADELPHIA, FRAN BURNS AND BART CLARK**, was electronically filed and is available for viewing and downloading from the ECF system. A copy was also served upon the following individuals by first class mail, postage prepaid, as follows:

Louis Schwartz, Esquire  
1528 Walnut Street, Suite 600  
Philadelphia, PA 19102

/s/ Brock J. Atkins  
BROCK J. ATKINS  
Assistant City Solicitor

DATED: September 30, 2011